

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

Conf. No. 5634

McINTYRE

Atty. Ref.: 3598-2 (AMK)

Serial No. 09/828,226

Group: 3696

Filed: April 9, 2001

Examiner: D. Felten

For: RANGE BID MODEL

\* \* \* \* \*

March 30, 2010

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR RECALCULATION OF  
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)**

Applicant respectfully requests recalculation of the patent term adjustment under 37 C.F.R. §1.705(b).

Submitted herewith are the following:

(1) The \$200.00 fee set forth in 37 C.F.R. §1.18(e);

(2) A statement of the facts involved, specifying:

(i) The correct patent term adjustment and the basis or bases under 37

C.F.R. §1.702 for the adjustment;

**The correct PTA for this application should be 732 days:**  
**for Patent Office delay to first action under 37 C.F.R.**  
**§1.702(a)(1) – 65 days; for Patent Office delay in response**  
**to a 35 U.S.C. §132 reply under 37 C.F.R. §1.702(a)(2)**  
**(reply to Amendment filed April 30, 2003) – 103 days;**  
**and for Patent Office delay in failure to issue the patent**  
**within three (3) years of the application filing date under**

**37 C.F.R. §1.702(b) - 620 days. Under 37 C.F.R. §1.704,  
the PTA should be reduced by 56 days.**

(ii) the relevant dates as specified in 37 C.F.R. §1.703(a)-(e) for which an adjustment is sought and the adjustment as specified in 37 C.F.R. §1.703(f) to which the patent is entitled;

**Application filing date – April 9, 2001**  
**Date of first action – August 13, 2002**  
**exceeds 14 months by 65 days**

**PLUS**

**Response filed – April 30, 2003**  
**Date of next action – December 11, 2003**  
**exceeds 4 months by 103 days**

**PLUS**

**Wyeth time starts three years from filing date – April 9, 2004**  
**Date of filing Notice of Appeal – December 20, 2005**  
**620 days**

**MINUS**

**Office Action dated December 11, 2003**  
**Response filed April 2, 2004**  
**exceeds 3-month response time by 22 days**

**MINUS**

**Response filed May 4, 2005**  
**Supplemental response filed June 7, 2005**  
**34 days – see 37 C.F.R. 1.704(c)(8)**

**EQUALS**

**720 days (any remaining Patent Office delays amount to overlaps)**

(iii) whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer – [NO]; and

(iv)

(A) any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 C.F.R. §1.704 **[SEE ABOVE]**; or

(B) that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 C.F.R. §1.704 **[SEE ABOVE]**.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:           /Alan M. Kagen/            
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